University of California, Berkeley
School of Law (Boalt Hall)

Depositions (Law 246.3)
Syllabus: First Edition (Subject to Change)

Fall 2011 Professor Hecht

Class #	Class Date	Topics	Assignments (to be completed before class)
1	8/24	Introduction to the Course and to Depositions	No reading assigned
2	8/31	Case Analysis	Prepare Assignment #1 (case analysis) and Assignment #2 (Initial Skills Inventory) Guest speaker: Joel ben Izzy Reading: Hecht Chapters 1, 2 & 4; and *Scoops* (Part I, Liability)
3	9/7	Witness Preparation: Procedural and Ethical Considerations	Prepare Assignment #3 (survey on the ethics of witness preparation) Reading: Hecht Chapters 5, 7 & 8; and Appendix #4: Guide to Witness Preparation Recommended reading: Hecht Chapter 10
4	9/14	Witness Preparation: Substantive	Assignment #4 (witness preparation exercise) and Assignment #5 (selection of topics for the next two weeks of witness preparation role plays) Reading: Reread Hecht Chapter 8, pages 185 to 204, and read Chapter 11, pages 260-278
5	9/21	Witness Preparation, Round One	Prepare Assignment #6 (witness preparation role play) Observed by attorneys from Howard Rice Nemerovski Canady Falk & Rabkin PC Reading: Hecht Chapters 6 & 9

Class #	Class Date	Topics	Assignments (to be completed before class)
6	9/28	Witness Preparation, Round Two	Prepare Assignment #6 (witness preparation role play continued) Observed by attorneys from Arnold & Porter LLP Recommended reading: Hecht Chapter 3; Appendix #1, Deposition Notice; and Appendix #2: Federal Form of a Subpoena
7	10/5	Defending the Deposition	Prepare Assignment #7 (debrief of the witness preparation role plays) and Assignment #8 (exercises in defending the deposition) Reading: Hecht Chapter 14 and Appendix #8: Objections at a Deposition in Federal Practice
8	10/12 NOTE: Class to be resched uled	Taking the Deposition	Prepare Assignment #9 (exercises in taking the deposition), Assignment #10 (discovery exercise), and Assignment #11 (selection of topics for the next two weeks of deposition role plays) Reading: Hecht Chapters 11 & 12; Appendix #6: Model Questions About a Conversation; and Appendix #7: Model Questions About a Document
9	10/19	Depositions, Round One, Focus on Discovery	Prepare Assignment #12 (deposition role play) Observed by attorneys from Weil, Gotshal & Manges LLP Reading: Hecht Chapter 13; Appendix #3: Supplies to Take to a Deposition; and Appendix #5: Starting the Deposition
10	10/26	Depositions, Round Two, Focus on Discovery (continued)	Prepare Assignment #12 (deposition role play continued) Observed by attorneys from Wilmer Cutler Pickering Hale and Dorr LLP No reading assigned

Class #	Class Date	Topics	Assignments (to be completed before class)
11	11/2	Dealing with Problem Counsel and Problem Witnesses	Prepare Assignment #13 (debrief of the deposition role plays) and Assignment #14 (exercises in dealing with problem counsel and problem witnesses) Guest speaker: former Magistrate Judge and current Professor from Practice Wayne Brazil Reading: Hecht Chapters 15 & 16 Recommended reading: Hecht Chapter 21
12	11/9	Deposing for Objectives In Addition to Discovery Detection of Deception	Prepare Assignment #15 (exercise in gaining an admission) and Assignment #16 (selection of problems for the next two weeks of deposition role plays) Guest speaker: Professor Clark Freshman, UC Hastings College of the Law Reading: Reread Hecht Chapter 11, 260-278; and read Hecht Chapter 25, and Appendices #10 & #11: Using Depositions at Trial
13	11/16	Depositions, Round Three, Focus on Gaining an Admission	Prepare Assignment #17 (deposition role play) Observed by attorneys from Wilson Sonsini Goodrich & Rosati PC Reading: Hecht Chapter 23, and Appendix #9: Adjourning the Deposition
14	11/23 NOTE: Class to be resched uled.	Depositions, Round Four, Focus on Gaining an Admission (continued) Using Depositions at Trial	Prepare Assignment #17 (deposition role play continued) Observed by attorneys from Latham & Watkins LLP Reading: Reread Hecht Chapter 25 Recommended reading: Hecht Chapters 17 & 18

Class #	Class Date	Topics	Assignments (to be completed before class)
		Final Paper	Assignment #18, Final Paper, and Assignment #19, Final Skills Inventory distributed at the last class of the semester and on or before by Friday, 12/16, the last day of examinations for the fall semester

Required Texts:

Hecht, Effective Depositions 2nd ed. (ABA 2010) ["Hecht"]

NOTE: I arranged with my publisher, the American Bar Association (ABA), for a 40% discount for purchases by my students of the text from the Law School bookstore. But please be aware that the Law School bookstore adds its own mark up to the price of the text. The second edition is also available www.amazon.com.

Hecht, Scoops v. Business-Aide-Inc.: A Liability and Damages Case File 5th ed. (2009) ["*Scoops*"]

NOTE: The Scoops case file will be provided by the instructor in class. Due to budget constraints, large volume copying is no longer provided by the Law School at no cost to students. "Hard" copies of the Scoops case file are being provided to each student at my actual cost of copying (without the mark up charged by the Law School bookstore for readers). The cost per student is $20.00. Payment either in cash or by a check, made to the order of Henry L. Hecht, should be made by no later than the fourth class of the semester on Wednesday, 9/14/11.

2011 Federal Rules of Civil Procedure 2011-2012 ed. (LexisNexis 2011), 2011 Federal Rules of Evidence 2011 ed. (LexisNexis 2011), and the Restyled 2012 Federal Rules of Evidence 2012 ed. (effective 12/1/2011) (LexisNexis 2011)

NOTE: These pocket editions will be provided by the instructor compliments of LexisNexis.

On-line Resources:

Federal Rules of Civil Procedure: http://www.law.cornell.edu/rules/frcp/overview.htm

Federal Rules of Evidence: http://www.law.cornell.edu/rules/fre/overview.html

Grading:

The course will be graded using the standard Berkeley Law curve. Grading will be based on class participation (30%); short written assignments, including a self-critique (30%); and the Final Paper (40%).

Your final grade will depend on the quality of your written work and your attendance and

participation in both class and the individual video review session with the instructor, described below. The quality of your preparation and effort in both the exercises and the simulation role plays as well as the insightfulness of your post-role play analysis will be considered and will affect your grade. The course is not "blind graded."

Class Hours, Attendance Policy, and Drop/Add Period:

The class meets on Wednesdays, from 3:35 p.m. to 6:15 p.m., in the Boalt Hall room 115.

Due to the use of role plays (simulations) throughout the semester, which depend on each student playing an assigned role, class attendance is mandatory. Absences and/or lateness will be noted and may result in a lower grade. If you are going to be absent or late for any reason, please notify me as soon as possible before class so that I may plan accordingly.

In addition, due to the use of role plays throughout the course and the need to determine the members of the class as soon as possible, the usual provisions of "Drop/Add" do not apply. You must decide whether you will enroll by no later than the end of the day on Tuesday afternoon, August 30, 2011, the last day before the second full week of classes for the fall semester.

Individual Video Critiques:

Each week when a deposition role play is conducted, takers and defenders will be video recorded and the videos will be posted on the course bSpace page for your review. You will be expected to review your own video in order to prepare a written self-critique. (I will provide instructions well before the recordings begin.) I will meet with the takers and defenders in a private review session. By the end of the semester, I will have met with each student for a review session at least one time.

Undergraduates and/or 1Ls to Play the Roles of the Witnesses:

In order to make the witness preparation and deposition role plays as realistic as possible, I am trying to arrange for Legal Studies majors and/or 1Ls to play the witness roles. I will let you know well before the first role play if they are available. If not, students on each side of the case will rotate in the role of the witness.

Computers in the Classroom:

This class is an interactive one. Critical to the pedagogy is the active participation of everyone. The expectation in this class is that if you are using a computer in the classroom, you are using it in "good faith" to enhance your learning experience in this class and not for any other purpose.

Journals:

I recommend that you keep a personal journal during the semester. You will find that journal writing is an important way to enrich your learning experience. Much of your learning in this class will be through self-critique—reflecting on your subjective experience in a structured learning environment. A journal will help you to facilitate the integration of subjective experience with the

content of the course. It also allows you to follow your progress and may be useful to you in the future as you look back on your experience in this class.

There is no one way to keep a journal, and you do need not spend excessive time writing. Entries can be short. Track your attitudes about your lawyering skills—the theories, the practice, your style, and that of your classmates. It is best to record your thoughts as soon as possible after completing a role play so that the experience is fresh in your mind. Your journal will assist you in "learning by doing." Journals are personal and confidential and, thus, will not be collected.

Finally as a practical note, I recommend that you keep your journal in a three-ring notebook. The notebook can also be used to hold the Scoops case file and the numerous other handouts distributed during the semester.

Instructor Biography:

My Berkeley Law faculty profile is found at http://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=48

Office Hours and Assistant:

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